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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/559,952	06/19/2006	Andrew Roche	13403.1003	7980
20601 7590 06/27/2008 SPECKMAN LAW GROUP PLLC 1201 THIRD AVENUE, SUITE 330 SEATTLE, WA 98101				
EXAMINER				
BASKAR, PADMAVATHI				
ART UNIT		PAPER NUMBER		
1645				
MAIL DATE		DELIVERY MODE		
06/27/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/559,952

Applicant(s)

ROCHE ET AL.

Examiner

PADMA v. BASKAR

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Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 December 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 3, 4, 7-17, 21-25, 27-39 and 41-65 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 1, 3-4, 7-17, 21-25, 27-39 and 41-65 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

1. The preliminary amendment filed on 12/9/05 is acknowledged and entered.

Claims 2, 5-6, 18-20, 26 and 40 are canceled.

Claims 1, 3-4, 7-17, 21-25, 27-39 and 41-65 are pending.

2. Restriction is required under 35 U.S.C. 121 and 372.

This application contains the following inventions or groups of inventions, which are not so linked as to form a single general inventive concept under PCT Rule 13.1.

In accordance with 37 CFR 1.499, applicant is required, in response to this action, to elect a single invention to which the claims must be restricted.

Group I, claims 1, 3-4, 7-17, 21-24, 61 (antibody), 25 (pharmaceutical composition), 59, 60 (kit), and 27-29 and 62 (method), drawn to an antibody that binds to extracellular Aspergillus, a composition, a kit and a method for the treatment or prevention of fungal infection using antibody.

Further restriction to one SEQ.ID.NO required (see paragraph # 4).

Group II, claims 30-35, 39 drawn to polypeptide and a composition.

Further restriction to one SEQ.ID.NO required (see paragraph # 4).

Group III, claims 36-38, 63 and 64 drawn to DNA and a composition.

Further restriction to one SEQ.ID.NO required (see Para # 4).

Group IV, claims 41-42 drawn to a method for immunization of a mammal against fungal infection using polypeptide.

Further restriction to one SEQ.ID.NO required (see paragraph # 4).

Group V, claims 43-49 drawn to a method for raising specific antibodies in a non human transgenic mammal.

Further restriction to one SEQ.ID.NO required (see paragraph # 4).

Group VI, claims 50-52 drawn to a method for identifying a binding partner of a polypeptide.

Further restriction to one SEQ.ID.NO required (see paragraph # 4).

Group VII, claim 53 drawn to a method for identifying a compound with antifungal activity.

Further restriction to one SEQ.ID.NO required (see paragraph # 4).

Group VIII, claims 54-56 drawn to a method for identifying an inhibitor of an extracellular *Aspergillus* polypeptide.

Further restriction to one SEQ.ID.NO required (see paragraph # 4).

Group IX, claims 57-58 drawn to a method for diagnosing fungal infection.

Further restriction to one SEQ.ID.NO required (see paragraph # 4).

Group X claim 65 drawn to a method for immunization a mammal against fungal infection using polypeptide (the claim depends on claim 31, which is a polypeptide not a polynucleotide as recited in claim 65, therefore, examiner is interpreting it to be a polypeptide).
Further restriction to one SEQ.ID.NO required (see paragraph # 4).

3. The inventions listed as Groups I-X do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special feature technical features for the following reasons:

The technical feature of linking groups appears to be that they are all related to antibodies peptides, nucleic acids and methods of using peptides, nucleic acids and antibodies.

The special technical feature of Group I is considered to be antibody that shares no common structure, property and function with Groups II-III since it has an inherent affinity, avidity, and specificity that DNA or a simple protein is not capable of expressing and do not share the same or a corresponding technical feature with Groups II-III

The special technical feature of Group II is considered to be polypeptide that shares no common structure, property and function with Group I and III since peptides contain amino acids and do not share the same or a corresponding technical feature with Groups I and III

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The special technical feature of Group III is considered to be polynucleotide, which is made up of nucleic acids that shares no common structure, property and function with Groups I and II and do not share the same or a corresponding technical feature with Groups I and II

Since the special technical feature of the Group I invention is not present in the Group II-III claims, and the special technical features of the Group II-III inventions are not present in the Group I claims, unity of invention is lacking.

The technical feature linking Groups IV-X is considered to be methods utilizing products that share no common structure, property and function and methods of using products so as to form a single general inventive concept under Rule 13.1. Hence, unity is lacking among groups IV-X.

Pursuant to 37 C.F.R. § 1.475 (d), the ISA/US considers that where multiple products, processes and methods are claimed, the main invention shall consist of the first invention of the category first mentioned in the claims and the first recited invention of each of the other categories related thereto. Accordingly the main invention (Group 1) comprises antibody that binds to extracellular Aspergillus, a composition, a kit and a method for the treatment or prevention of fungal infection using antibody.

Further pursuant to 37 C.F.R. § 1.475 (d), the ISA/US considers that any feature which the subsequently recited products and methods share with the main invention does not constitute a special technical feature within the meaning of PCT Rule 13.2 and that each of such products and methods accordingly defines a separate invention. Therefore, the groups of inventions above do not constitute a special technical feature within the meaning of PCT Rule 13.2 and that each of such products and methods accordingly defines a separate invention.

Accordingly, Groups I-X are not so linked by the same or a corresponding special technical feature as to form a single general inventive concept.

DISTINCT INVENTIONS

4. For each group of inventions I-X above, restriction to one of the following SEQ.ID.NO is also required under 35 U.S.C. 121 and 372. Therefore, election is required of one of inventions I-X and one of SEQ ID NO: 1, 2, 3, 6 and 36.

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Inventions SEQ ID NO: 1, 2, 3, 6 and 36 are not so linked as to under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons:

The claimed SEQ.ID.NO SEQ ID NO: 1, 2, 3, 6 and 36 share no common special technical feature because they have no common structure (i.e., no common sequence) SEQ.ID.NO SEQ ID NO: 1, 2, 3, 6 and 36 represent sequences that share no common structure as antibodies that bind to polypeptide, polypeptide and the polynucleotides encoding them are not linked by the same the same or a corresponding special technical feature as to form a single general inventive concept. Therefore, where structural identity is required, such as for hybridization or expression of protein or binding of antibody, each sequence appears perform a different function in that peptides elicit an antibody response and nucleic acids encode peptides that specifically bind to an antibody. Thus they share no common structure and function so as to form a single general inventive concept under Rule 13.1. Hence, unity is lacking among groups SEQ.ID.NOS.

Applicant is required under Restriction is required under 35 U.S.C. 121 and 372 to elect a single disclosed SEQ.ID.NO from any group elected.

5. Applicant is required, in reply to this action, to elect a group and one sequence and identify the SEQ.ID.NO to which the claims shall be restricted. The reply must also identify the claims readable on the elected invention, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered non-responsive unless accompanied by an election.

6. Papers related to this application may be submitted to Group 1600, AU 1645 by facsimile transmission. Papers should be transmitted via the PTO Fax Center, which receives transmissions 24 hours a day and 7 days a week. The transmission of such papers by facsimile must conform to the notice published in the Official Gazette, 1096 OG 30, November 15, 1989. The Right Fax number is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PMR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PMR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PMR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Padma Baskar Ph.D., whose telephone number is ((571) 272-0853. A

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message may be left on the Examiner's voice mail system. The Examiner can normally be reached on Monday to Friday from 6.30 a.m. to 4.00 p.m. except First Friday of each bi-week.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Shanon Foley can be reached on (571) 272-0898.

Respectfully,

/Padma v Baskar/

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